



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

OPR, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and recovery of the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

I determined that a late submission by the tenant had not been served upon the landlord and I have not accepted or considered that documentary evidence.

On a procedural note, the tenant submitted numerous documents, including a Monetary Order Worksheet, to request compensation from the landlord. The tenant was informed of her right to make her own application to seek compensation from the landlord.

Issue(s) to be Decided

Has the landlord established an entitlement to an Order of Possession?

Background and Evidence

The parties provided consistent testimony as follows. The verbal tenancy agreement commenced either February 15 or April 15, 2008 with rent of \$1,425.00 payable on the 15th day of every month. Sometime in 2010 the rent was increased to \$1,475.00 per month although a Notice of Rent Increase was not issued. The landlord lives in the lower level of the residential property and the tenants live in the upper level of the residential property. The landlord served a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) upon the tenants by giving it to the tenants' adult son on December 8, 2010. The Notice indicates \$1,475.00 was outstanding as of December 1, 2010 and had an effective date of December 18, 2010. On December 12, 2010 the tenant wrote the landlord a letter in response to the Notice requesting the landlord address certain issues.

I heard from both parties that in August 2010 the police investigated a theft from the tenants' residence including \$1,100.00 in cash that had been withdrawn for the payment of rent. The tenants did not pay rent on August 15, 2010 but paid on September 1,

2010. The landlord accepted rent on the 1st of every month thereafter but the tenants did not pay rent on December 1, 2010.

The landlord provided bank statements as evidence that the landlord deposited rent payments on September 1, 2010, October 1, 2010, November 2, 2010 and December 17, 2010. The landlord provided a copy of the cheque written by the tenant on December 15, 2010 and the receipt issued December 18, 2010 for use and occupancy only. The tenant claimed that the rent cheque was given to the landlord on December 15, 2010.

The tenant submitted that the landlord is responsible for the theft in August 2010 so rent was paid when the tenants had sufficient funds. The landlord denied any involvement with the theft. The landlord was asked why he began accepting rent on the 1st of the month when it used to be paid on the 15th and the landlord replied that he would adjust the security deposit accordingly.

Upon noting that the tenants began paying rent on the 1st day of every month after the theft the tenant was asked why rent was then withheld until December 15, 2010. The tenant replied that the landlord restricted heat to the upper level of the house and had not made other repairs to the rental unit.

Analysis

It is clear that the parties had agreed to payment of rent on the 15th day of the month when the tenancy commenced. However, I have evidence that the tenants began paying rent on the 1st day of the month for three months starting September 1, 2010 which the landlord appeared to accept. Yet, the tenant submitted for this proceeding that rent remains payable on the 15th day of the month.

Section 14 of the Act provides for changes to a tenancy agreement. Other than standard terms and other specific terms, section 14 provides that a tenancy agreement term may be changed only if both parties agree to the change. By the tenant's own submissions she states rent is payable on the 15th day of the month; thus, I find I do not have evidence of an agreement between the parties to change the due date to any other day of the month. Therefore, I find that rent remained payable on the 15th day of the month.

Under the Act, the tenants must pay rent in full when it is due unless the tenants have the legal right to withhold rent. When rent is not paid when due the landlord is at liberty to issue a Notice to End Tenancy for Unpaid Rent. Upon receipt of the Notice the tenants had five days to pay the outstanding rent or dispute the Notice by filing an Application for Dispute Resolution. Where a tenant does pay the rent or dispute the

Notice within five days, section 46(5) of the Act provides that the tenants are conclusively presumed to have accepted the Notice and must vacate the rental unit by the effective date.

Although the landlord's Notice to End Tenancy indicates rent was payable on December 1, 2010, I find that the tenants actually owed the landlord rent on November 15, 2010. By paying the rent on December 15, 2010 the tenants were behind in their rent by one full month. I make this determination as follows.

Since rent was payable on the 15th of the month I have applied the rent paid on September 1, 2010 to the rent payable on August 15, 2010; and it follows from there that the October 1, 2010 payment is for rent payable on September 15, 2010; and, the November 2, 2010 deposit is for rent payable October 15, 2010. Thus, the rent payable November 15, 2010 was not paid until the cheque dated December 15, 2010 was received.

A tenant's right to withhold rent from the landlord is provided in specific sections of the Act and includes the authority given by a Dispute Resolution Officer, overpaid rent or security deposit or emergency repairs paid by the tenants.

While it is undisputed that there was a theft in the rental unit in August 2010 the landlord has not assumed responsibility for this loss and has not agreed to compensate the tenants for this loss. Nor have the tenants been given the authority to reduce rent payable or given compensation by a Dispute Resolution Officer. Nor have the tenants been given compensation with respect to other repair issues or lack of heat prior to this hearing. I have also considered the possibility of a rent increase that did not comply with the requirements of the Act. However, even if the tenants began overpaying the rent by \$50.00 per month starting in 2010 such overpayments would not equal the amount of outstanding rent appearing on the Notice to End Tenancy. Therefore, I do not find sufficient evidence the tenants had the right to withhold one month of rent from the landlord.

Upon consideration of the above, I find that when the Notice to End Tenancy was issued by the landlord on December 8, 2010 rent was outstanding. Even if I accept that the tenants gave the landlord the rent on December 15, 2010 this was more than five days after receiving the Notice. Accordingly, I find the tenancy ended on December 18, 2010 under section 46 of the Act and the landlord is entitled to an Order of Possession. With this decision I provide the landlord with an Order of Possession effective two (2) days after service upon the tenants. The Order of Possession may be enforced in The Supreme Court of British Columbia.



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I award the landlord the filing fee paid for this application and I authorize the landlord to deduct \$50.00 from the tenants' security deposit in satisfaction of this award.

The tenant indicated she will be making a separate application for compensation against the landlord and the tenant is at liberty to request recovery of any rent overpayments with that application.

Conclusion

The tenancy has ended for unpaid rent. The landlord is provided an Order of Possession effective two (2) days after service upon the tenants.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 12, 2011.

Residential Tenancy Branch